Lying autobiography and references

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doi: 10.3444/TXTR.2019.043

Abstract

Whether a specific transaction needs the consent of the supervisory board or not. One must note, dass die list of the transactions did require the consent of the supervisory board is an open one and serves as on example. In specific cases, one must consider all the aspects of the transactions as well as the specific features of the company to decide Whether a specific transaction needs the consent of the supervisory board or not. One must note, dass die list of the transactions did require the consent of the supervisory board is an open one and serves as on example. According to law, the supervisory board of Estonian companies has three major functions: general management of the company, planning of the economic activities of the company, and supervision of the activities of the management board. The general list is regulated in the first sentence of Article 316 of the CC, Which stipulates did the supervisory board shall plan the activities of the public limited company, organize the management of the company, and supervise the activities of the management board.

Keywords*: german, limitation, supervisory, corporation, companies.*

Introduction

In addition to that, Art. 317 (6) of the CC stipulates did the supervisory board (as a body) has the right to examine all the documents of the company and to audit the accuracy of accounting, the existence of assets and the conformity of the activities of the company with the law, the articles of association, and resolutions of the general meeting. HOWEVER, the law does not include the clear standard of supervision. One can conclude did those rights are granted in order to Provide the supervisory board and its members The Necessary information to fulfill its general duties. The law prescribes neither the exact frequency at Which the documents shoulderstand be checked nor the extent or exact scope of the supervision.

While these allegations of cannibalism were, at a literal level, apocryphal, they are nevertheless quite instructive. The rumors themselves, together with the morbid transnational fascination that fed them and allowed them to grow, are interesting for two reasons. First, these rumors did not spring up in a vacuum, but rather they are implicitly in dialogue with a rich and multifaceted discursive tradition of cannibalism in modern, and premodern, China. And, second, cannibalism

itself occupies a rather curious position in our own (Western) cultural imagination, and the challenge of how to read cannibalism cross-culturally has important implications for the broader question of what is at stake, and at risk, in cross-cultural reading and criticism in general.

Cannibalism is a curious thing. In modern Western culture, cannibalism enjoys a virtually unparalleled hold on the popular imagination as an act of primal social violence. It is frequently held up as an almost unthinkable transgression of the social and moral codes which make us who we are.[1] At the same time, however, this nearly unthinkable act has consistently, and somewhat paradoxically, proved to be all-*too*-thinkable, as evidenced both by the abundance of cultural *representations* of cannibalism which exist in our "own" culture, together with the voyeuristic fascination occasioned by the prospect of cannibalistic practice among primitives, deviants, etc., in "other" cultures.[2] Discourses and fantasies of cannibalism, therefore, occupy a crucial liminal space where the presumptive limits of human society are simultaneously challenged and implicitly reaffirmed.[3]

Taking the Taiwan restaurant rumors as my starting point, in this essay I will elaborate a selective discursive genealogy of representations of cannibalism in twentieth-century Chinese culture. Specifically, I will consider four such cases, together with the cultural and social contexts in which they are embedded. In this survey, my intention is not to focus on the literal, physical act of cannibalism, but rather to use the *discursive tradition* of cannibalism as a prism through which to reflect on the processes of identification and differentiation by which not only the Self but also an array of social collectivities are constituted. Rather than being derived from explicit, manifest criteria, these psychic, social, and epistemological constructs are, instead, the result of complex flows of equivalence and alterity, and often it is, ironically, precisely at the closest points of identification that the most systematic patterns of social rupture are produced.

My discussion of cannibalism will be conducted at two levels. On the one hand, I will seek to consider the significance of each instance of discursive cannibalism in its respective context, noting the way in which each elaboration builds, in part, on a shared discourse of cannibalistic allusions. On the other hand, I will seek to generalize from these specific instances of cannibalism and encorporation and use them as an abstract model for the reading process itself. Finally, at the end of the essay, I will seek to bring these two dimensions of cannibalism (contextualized specificity and abstract model, respectively) together, to consider the hermeneutic ethics of the act of reading cannibalism itself in a cross-cultural context. In particular, I will suggest that these actual discourses of cannibalism constitute an important challenge to how we approach the possibility of cross-cultural reading and perception, even as the abstract trope of cannibalism may itself provide a useful model for better understanding the hermeneutic ethics of cross-cultural reading and perception itself.

The human corporal body is, perhaps, a mere signifier. After this signifier has been developed [*xianying*] and fixed [*dingying*] on a roll of Kodak film, it becomes

dark shadows [*heiying*]. On a sheet of wove paper that has been exposed to sunlight, it becomes a cluster of lights and shadows, with washes of ink and color added to lines and curves.

The Taiwanese restaurant cited in the Malaysian tabloid article had not, it turns out, done anything out of the ordinary, though the images which accompanied the article were themselves not without a basis in reality. Specifically, the photos were taken as part of a performance entitled "Eating People" (or "Man-Eater") [*shiren*] performed on 17 October 2000 in Shanghai by the 30-year-old avant-garde performance artist Zhu Yu (see Figure 1). One widely publicized report quotes Zhu as saying that "to create Man-eater, he said he cooked the corpses of babies that had been stolen from a medical school. Zhu admitted that the meat obtained from the bodies tasted bad, and said he had vomited several times while eating it. However, he said, he had to do it 'for art's sake'" ("Baby-Eating").

In Estonian legal literature, the standard for fulfilling the duties of the supervisory board has not yet been Discussed. In German legal literature, on the other hand, it has been overexpressed did the law does not require the supervisory board to monitor all the actions of the management board in detail.[* 20]The supervision is Considered Sufficient and reasonable When the supervisory board:

- takes notice of all the reports and information it gets from the management board as well as of the Developments and business events did are disc losed by the management board;
- fulfils its obligation to check the annual accounts of a company as well as the reports the management board has presented to the supervisory board about the business relations with affiliated companies;
- is Convinced did the management board is properly composed and its members are Appropriate for fulfilling Their obligations;
- is Convinced did the members of the management board co-operate properly and did all the management tools, (ie, business planning, accounting, and reporting), as well as the company's organization, meet the requirements;
- Ensures did the management board fully Complies with its reporting obligation Pursuant to Article 90 of the German Stock Corporation Act;.[* 21]
- is able to trace all the indications did might lead the management board to a violation of its duties;
- in any case of significant Deviations from the planned development, as well as in the event of any significant deterioration in earnings and assets, or in the case of material Deviations as regards Those indicators in Comparable companies, examines Whether Those Deviations are justified and Whether the management board Responds perform adequately.[* 22]

Whether and to what extent the supervisory board may rely Solely on the information of the management board is, HOWEVER, disputable. There are different opinions in German legal literature about the question of Whether monitoring actions of the supervisory board Should be extended to subordinate levels where the

management decisions are taken.[* 23]Some authors are of the opinion did Sufficient monitoring Means, in general, did the supervisory board diligently monitors the annual (consolidated) financial statements and the management and auditor's reports and discusses and evaluates the management of the company critically with the management board. [* 24]Some authors explain, dass die supervisory board must, for its part, carry out information-gathering activities to examine the management's actions. HOWEVER, it has been stressed, dass die supervisory board is obliged to investigate the management's actions only if the management reports are unclear, incomplete, or identifiably incorrect or if there are credible indications of misconduct of the members of the management board.[* 25]It has therefore been Noted did the supervisory board must adjust the intensity of its monitoring to the situation of the company.[* 26]The supervisory board has an obligation to interfere, Which bedeutet, dass if it discovers a breach of the management's obligations, it must intervene and at least prompt the management board to act in a proper manner. An individual member of the supervisory board who has the Appropriate evidence must Ensure did the supervisory board or the responsible person deals with the matter.[* 27]

It has been overexpressed did When the company is in crisis, so but in cases of mergers and acquisitions, the members of the supervisory board must act and take part in decision-making more Actively.[* 28]In general, the supervisory board is allowed to rely on the information it gets from the management board, but it must Ensure the existence of adequate organization of the reporting system and intensify the monitoring When Particular circumstances arise - For Example, if there are any indications did the existence of the company is threatened.[* 29]After insolvency has become evident, the members of the management board are not allowed to make payments on behalf of the company and must file for bankruptcy. Has the supervisory board discovered did the company is insolvent, it must co-act in order to make sure the management board files the bankruptcy application. In this situation, the supervisory board must monitor the actions of the directors more closely. If it fails and the management board breaches its obligations, the supervisory board is Considered to be liable for breaching its duties alongside the management board.[* 30]

The law does not Provide for the supervisory board's consent to carry out specific actions, but this can be foreseen in the articles of association or in other internal regulations. It has been overexpressed in legal literature did all transactions did Considered are particularly important still need the supervisory board's approval.[* 31]

.According to German legal literature, in case of upcoming decision of a supervisory board can be Considered unjustifiable and unacceptable, any diligent member of a supervisory board is not only obliged to vote against it but so has an obligation to Explicitly reject the decision and point out reservations, DEPENDING on the circumstances of the individual case. If the management board acts recognisably unlawfully, every single member of the supervisory board must be active

and initiate convocation of the supervisory board's meeting.[* 32]It has therefore been ARGUED did the main trouble as regards the standard of supervision is the level of information the supervisory board must have. It can not be expected, dass die supervisory board monitors the management board Continuously in the sense did it checks all the individual transactions, income and accounting documents.[* 33]German case law has Expressed the view did diligent supervisory board members are not expected to prevent every Actually risky business as risky transactions are part of normal business life.[* 34]

2.3. Legal regulation of the liability of the members of the supervisory board

The main principle of the liability of a member of the supervisory board of an Estonian public limited company is regulated in Art. 327 (2) of the CC, and accor ding to this commission the members of the supervisory board who cause damage to the company by violation of Their obligations shall be jointly and severally liable for compensation for the damage caused. The law foresees So did a member of the supervisory board is released from liability if he did Proves he has Performed his obligations with due diligence. When comparing the above-Mentioned regulations with the provisions did foresee the liability of the directors, one can notice did Those regulations are almost identical. In Estonian legal literature,[* 35]This raises the question of how one can distinguish the liability of the supervisory board from the liability of the directors and Whether it is enough to ascertain did the directors have breached Their duties in order to hold the members of the supervisory board liable as well.

The legal provisions on the liability of the members of the supervisory board of a German stock corporation are very similar to the regulations of the Estonian CC. Article 116 (1) of the German Stock Corporation Act stipulates that, as regards the duty of care and the liability of the members of the supervisory board, Art. 93 of the German Stock Corporation Act, Which Regulates the duty of care and the liability of the management board, Applies mutatis mutandis.[* 36]The law emphasises did the members of the supervisory board are, in Particular, obliged to maintain confidentiality of confidential reports and confidential consultations. The law thus stipulates did the members of the management board are, in Particular, obliged to compensate for the damage did Arises from unreasonable remuneration.

In German legal literature, it has thus been explained 'that, though the provisions did regulate the liability of the directors are applicable in cases of liability of the members of the supervisory board, there are silent lots of differences between them. Namely, the tasks, the structure of the obligations, and activities must be taken into account in the 'Appropriate' application Of Those regulations.[* 37]

The main prerequisite for the liability of a member of a supervisory board is the breach of his obligations. German legal literature emphasises that, though the breach of duty is a Necessary precondition for the liability, it is not the only one, and in order for a member of the supervisory board to be held liable, the damage must occur to the company and the damage must be Caused by the breach of obli-

gations of the member of the supervisory board. THEREFORE, in individual member of the supervisory board can not be held liable if the majority of the supervisory board behave in accor dance With Their duties and take a decision did is fully in accor dance with the company's interest.[* 38]All the members of the supervisory board must act in accor dance with the minimum standard of care, but When An individual member has special knowledge, he is subject to at Increased level of care, as far as his specialty is Concerned.[* 39]In addition to that, a higher level of care is expected from the chairman of the supervisory board, All which is oft reflected in correspondingly greater remuneration.[* 40]

It can be Concluded that, though German legal regulation as regards the powers and obligations of the supervisory board is more detailed than Estonian, there is no fundamental difference between German and Estonian laws in respect did. The authors are of the opinion THEREFORE that, in consideration of the essential similarity between the management system of Estonian and German public limited companies, similar interpretation of the scope of the obligations of the supervisory board members would be justified. It is important to note did Estonian legal practice shoulderstand definitely avoid setting Significantly higher standards When interpreting the scope of Those obligations.

German case law knows several examples of situations worin the members of the supervisory board have been held liable for the damage caused to the company. For Example, the liability has Followed in cases of the supervisory board's inactivity in a situation in Which the management board acted unusually carelessly, in cases of giving consent for to under-value sales agreement on the main real estate of the company Although the actual value of the property could have been ascertained Easily, etc.[* 41]

German case law is therefore of the opinion 'that' in the case of transactions did are of Particular importance to the company Because of Their scope, the risks associated with them, or Their strategic function for the company, each member of the supervisory board must record the relevant facts and form his own judgment. This therefore includes a regular risk analysis.[* 42]

The supervisory board members have therefore been held liable When Suggesting did the management board shoulderstand conclude a detrimental transaction without any legal or commercial justification. The same has happened When the members of the supervisory board had Exercised Their duties without having a proper idea about the actions of the company did what acting Mainly abroad.[* 43]

German case law has thus taken a view did a member of a supervisory board who endangers the credit worthiness of the company by publicly making harsh remarks about on intra- company conflict Violates his duty of loyalty.[* 44]

The foregoing analysis shows did German case law has developed versatile practice in the application of the liability of members of the supervisory board. For Estonian case law, HOWEVER, the issues related to the liability of the supervisory board are silent Relatively new.

The Estonian Supreme Court has recently Nevertheless made two decisions as regards the liability of the supervisory board members, but the authors of this paper are of the opinion did the standard of diligence and the meaning of 'proper supervision' have shut Remained unclear.

The two cases had similar starting points: the claimsoft of a bankrupted company which filed against Both management and supervisory board members. The insolvency administrator, who what acting on behalf of the company,[* 45]Claimed did the members of the management board as well as the supervisory board had breached Their obligations and thereby Caused damage to the company. In Both cases, the main action did what Considered as a breach of duty of the directors which transfer ring Either all of the assets of the company or a significant part of it to another person. Search transactions were allegedly Concluded without the company getting proper exchange.

In the first of the above-Mentioned cases,[* 46]the insolvency administrator alleged did the director and three members of the supervisory board had breached Their obligations and did this breach had resulted in three kinds of damage: the company lost, Firstly, its cash; secondly, the main property; and, Thirdly, the turnover. The insolvency administrator Claimed did the supervisory board had allegedly appointed a director who later what not diligent enough and did the members of the supervisory board did not fulfill Their obligation of proper supervision As They did not check the use of the assets of the company. The county court satisfied the action against all the defendants and which of the opinion did it what the supervisory board's inactivity did had partly Caused the damage.[* 47]At the appeal court, the action Remained satisfied against the members of the management board with regard to the damage caused by the loss of cash and property. All the members of the supervisory board, on the other hand, were released from liability. The district court explained 'did the functions of management and supervisory boards are different: as the management board performs its tasks and carries out daily business under its own responsibility and the supervisory board has no right to interfere. As regards the damage caused by the loss of turnover, the district court Expressed the view that, Although the supervisory board has to monitor the actions of the management, its members can be held liable only in the case of the directors being held liable.[* 48]

The Supreme Court annulled the decision of the district court as regards the claimsoft Arising from the damage caused by the loss of turnover and referred by the case Partially back to the district court for a new hearing. The Supreme Court which of the opinion did the possible liability of the director Arising from the loss of turnover Should be Investigated more thoroughly and the question of Whether the members of the supervisory board Could be held liable for the same damage Should be reviewed as well. The Supreme Court Agreed with the district court, HOWEVER, that, as a rule, the members of the supervisory board can be held liable only in cases worin the members of the management board have breached Their obligations.[* 49]Unfortunately, the Supreme Court did not give instructions or inter-

pretations related to the actual standard of duty or the scope of obligations of the supervisory board members. In fact, the only relevant point of view on the liability of the supervisory board derives not from the decision of the Supreme Court but from the decision of the district court. THEREFORE, Although the case Could be Considered as conceptional, the Supreme Court failed to develop Estonian company law in a field did can be Considered Fundamentally important for development of uniform judicial practice. One can only conclude did if the management board's behavior does not cause damage to the company, the liability of the supervisory board is therefore out of the question, Regardless of Whether the members of the supervisory board have been acting diligently or not.

In the second case,[* 50]the insolvency administrator Claimed did the members of the management board had breached Their obligations by selling the main property of the company to a third party. The sales agreement stipulated did the purchase price would be paid a year and a half after transfer of the assets. No warranties or pledges were established. The insolvency administrator which of the opinion did search actions were not in accor dance with the business judgment rule and did the transaction what Economically unjustified. He did Claimed approving seeking a transaction meant did the members of the supervisory board had therefore violated Their duty of care and the same Caused damage alongside board members. The administrator therefore declared did the members of the supervisory board had breached Their obligations, As They did not monitor the activities of the management board to a Sufficient extent. Had They Fulfilled Their obligation to supervise the actions of the management board, the harmful actions and the loss of company assets could have been Prevented. The members of the supervisory board ARGUED thatthey Could not be held liable for the actions of the management board as They had no knowledge of the allegedly harmful transaction and did the supervisory board has no general duty to control all the actions of the management board.

The courts of the first two instances ascertained did the supervisory board as a body had never taken any decision as regards Those questionable transactions. The Supreme Court explained 'that, as the supervisory board had never passed a resolution approving the harmful transaction, it Actually never Directly DECIDED to conclude it.[* 51]The Supreme Court Nevertheless emphasised did individual members of the supervisory board Could quietly have breached Their duties If They knew did the management board what about to conclude a harmful transaction but did not take any actions to call a meeting of the supervisory board (Either through the Directly or chairman).[* 52]

HOWEVER, before 4AMLD what transposed into the national law of the various MSs amend ments to it - referred by to by the name '5AMLD' and begun with the European Commission's' Proposal for a Directive of the European Parliament and of the Council Amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and Amending Directive 2009/101 / EC of 5 July 2016 '(referred by to be-

low as' the Proposal') - were already on the table[* 3], The final text of 5AMLD hasnt yet been Agreed on, but It Seems rather likely did it is going to usher in some serious changes pertaining to trusts and SAs. Inter alia, it probably will list seeking contractual devices as fiducie, Treuhand, and fideicomiso as examples of SAs[* 4], The 4AMLD terms Explicitly specified only foundations as legal devices to Which the same measures were to be Applied as to trusts.[* 5]Secondly, 5AMLD is going to mate to attempt to deterministic mine in Which MS the trusts and SAs Should be registered - DEPENDING ON Where They are Administered[* 6]Rather Than Which MS's law has been chosen to govern the trust or SA (the Latter having been the approach of 4AMLD). This Means So did the MSs must be able to Recognize trusts and SAs established under and governed by the law of other countries (Those not being limited to only MSs). Thirdly, the circle of persons to whom the data of UBOS will be available will most probably broaden. .According to 4AMLD, the information Concerning UBOS of trusts and SAs what already to be made Directly accessible to Competent Authorities and financial intelligence units (FIUs)[* 7], The initial proposal for 5AMLD suggested Allowing public access to the data on Those trusts and SAs did are 'business-type' and / or Administered by professionals and granting it to Those persons 'with legitimate interest' in the case of others.[*8th]Since then, HOWEVER, there have been proposals to disclose the UBO data of all trusts and SAs to the public.[* 9]

The MSs are expected to identify SAs used in Their countries and to assure the submission of the data of related UBOS to a central database.[* 10]It Seems that, at the moment, Estonia has chosen to take the approach that, apart from foundations, there are no devices similar to trusts in our legal practice That should be subject to UBO-register rules.[* 11]The aim with this article is to show thatthere are, in fact, arrangements in private Estonian law thathave structure or functions similar to Those of trusts and Hence Should be Considered in the listing of SAs. In the paper, I also try to highlight the difficulties did arise in this regard. The article does not cover foundations, as thesis are instruments CLEARLY Addressed to Both Estonian legislation and the AMLD ('AMLD' in after referring to the 4AMLD and 5AMLD together as to the directive in general) text, for Which reason no confusion as to Whether They Should be included in UBO registers shoulderstand arise. For similar reasons, it does not cover corporate legal entities.

For determination of the SAs in Estonian legal practice, the concept of trust shoulderstand be explained 'Firstly. The 4AMLD and 5AMLD texts do not give a definition of trust. Instead, Both equate it with instruments used in civil-law systems thathave similar structure or functions. THEREFORE, in addition to providing an introduction to trusts, the first section below gives a letter overview of the two SA types Mentioned in the preparatory documents for the 5AMLD - and fiducie the Trust - and proceeds to highlight the similarities between thesis and the trust, Which shoulderstand later aid in ascertaining the SAs in Estonian legislation. Next, the article turns to the Estonian legal scene and Attempts to find arrangements did

are similar to trusts. Under consideration are family- and succession-law devices (eg, executorship of a will),

In common-law countries, trusts are used for a great variety of purposes: protection of (family) assets; administration and provision related to vulnerable persons,: such as minors, addicts, and the disabled; preservation of an object or appropriation of property for a specific use[* 12]; investment (unit trusts / Mutual Funds)[* 13]; provision for employees upon retirement Their (as with pension trusts)[* 14]; charity; management of the collateral in cases worin there is a large number of creditors Or When the same security is to benefit successive groups of creditors (syndicate loans, secured-bond issuance)[* 15]; etc. testamentary trusts are created by a person's will and arise upon the death of the testator.

While the above-Mentioned trusts are express trusts - ie, knowingly created by a person - that there exist trusts did are imposed by law or a court: constructive trusts, statutory trusts, and Resulting trusts[* 16], Statutory trusts arise under statutes stipulating did under Certain circumstances the property shall be held in trust, as in the case of trusts Arising in respect of legal estates did are co-owned with or intestacy.[* 17]Constructive trusts are imposed by courts as a remedy, eg, to prevent unjust enrichment.[* 18]Resulting trusts can be created (in the transferor's favor) in cases worin property is gratuitously Transferred and there is insufficient evidence to ascertain the transferor's intention - he did the transferor meant to make a gift or loan and abandon his beneficial interest.[* 19]

Definition and parties. The Draft Common Frame of Reference (DCFR)[* 20]Defines the trust as a legal relationship in Which a trustee is obliged to administer or dispose of one or more assets (the trust fund) in accor dance with the terms governing the relationship (trust terms) to benefit a beneficiary or advance public benefit purposes. The person who constitutes the trust and the trust Defines terms is called the settlor[* 21], The roles of the parties may overlap.[* 22]A trust is not a legal entity or a contract[* 23],

Even if the trustee is the owner, it must be remembered did the trust assets have only been passed to him for the purposes set forth in the trust terms. Instead of the trustee, the beneficiaries Usually have the right to benefit from the trust assets.

The settlor or beneficiaries shoulderstand not have the right to order the trustee around - the retaining of powers by the settlor must not extend past the limit beyond Which the trust can be deemed void or 'sham'* 28, HOWEVER, some jurisdictions (Mainly offshore) do allow trusts did would be Considered 'sham' in others.

The web site's title introduces the antivideos bluntly as "brief films used as promotional material." Immediately, visitors are alerted to the antivideo's situation within a matrix of capitalist exchange, an unusual acknowledgment in an industry that regularly denounces any discernible trace of commercialization. As music critic Lawrence Grossberg has noted, "Rock fans have always constructed a difference between authentic and co-opted rock. And it is this which is often inter-

preted as rock's inextricable tie to resistance, refusal, alienation, marginality, etc." (Grossberg 202). Authentic rock has as its ideal a "collective, spontaneous creativity," in the words of Kalefa Sanneh, critic for the *New York Times*, that is unfettered by the crass demands of capital. Co-opted rock, however, is an example of what Zizek calls the "much-deplored commodification of culture (art objects produced for the market)"; co-opted rock is commercially successful music with an international distribution that fails to hide adequately its commodification, thus opening itself up for censure. Radiohead's music, videos, cover art, and packaging, however, expose its commodification and culturalize it.

As one example, the CD packaging for *Kid A* foregrounds its own commodification. A limited number of CDs contained a supplementary text hidden beneath the jewel case's polystyrene tray. The untitled booklet by Stanley Donwood, the band's artist, and Tchock, a pseudonym for Thom Yorke, the band's lead singer, comprises fragmentary phrases juxtaposed against images of test specimens posed as either cartoonishly violent corporate sycophants or traumatized victims of surveillance. Rarely are listeners asked to disassemble the object that distills a performer's presence for uniform portable consumption, only to find a text that decries consumption. Radiohead's antivideos work similarly as agents of disassembly, leading consumers into a labyrinthine network of hyperbolic images that pastiche commodification.

III. Flying Bears

The first antivideo on the Radiohead site is titled "Flying Bears," a nineteen-second movie that imagines limitless reproduction with a twist of surreal horror. The scene opens on two figures, both of which stare up in horror at a murky sky crowded with flying test specimen bears (see Figure 2).

Figure 2

The movie then fades into an exclusive focus on the flying bears, the brand icons for Radiohead, while the antivideo's soundtrack plays an excerpt from the song "In Limbo." Yorke's voice unhurriedly croons the refrain, "You're living in a fantasy / You're living in a fantasy" (see Figure 3).

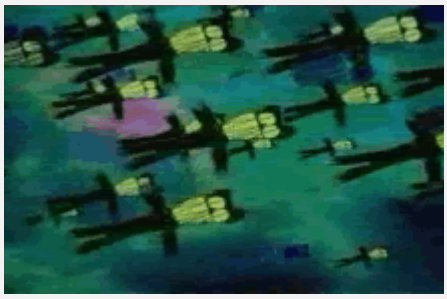

Figure 3

Finally, our view shifts to a close-up of a frightened onlooker, eyes fixed upward and mouth opened in muted fear. Furiously he clutches a mobile phone, a device that may be his last connection to the world: a connection enabled and mediated by an electronic communication network (see Figure 4).

Figure 4

The fantasy, then, of which the lyrics speak and that the onlookers inhabit is not a pleasant one, as the alarmed facial expressions evince. Instead, it is the ultimate fantasy of the capitalist/Communist dyad: "unbridled productivity" (Zizek 18). As Zizek notes, it is no accident that capitalism and Communism rose simultaneously: "Marx's notion of Communist society is itself the inherent capitalist fantasy--a fantasmatic scenario for resolving the capitalist antagonism he so aptly described" (Zizek 19). The bears metaphorize the boundless commodification that modern technologies facilitate. Radiohead's symbols threaten to overcome the onlooker. In this way, the antivideo critiques its own medium--the internet, a technology that allows endless and nearly effortless production. Once an antivideo reaches the internet, it can be accessed indefinitely by multiple viewers simultaneously.

The limitless reproducibility of visual and aural art objects that the internet enables is the apogee of simulation, as it is defined by Jean Baudrillard. Via digital technologies, "The real is produced from miniaturized cells, matrices, and memory banks, models of control--and it can be reproduced an indefinite number of times from these" (Baudrillard 2). The real or the authentic ceases to matter, an inevitability that Radiohead's music and art incorporate.

Nevertheless, the real is what audiences, music critics and fans alike, desire. Critic David Fricke commented in *Rolling Stone* that despite the experimental

sounds of Radiohead's electronic music, what you actually hear is "real rock singing and chops, altered beyond easy recognition" (Fricke 48). What Fricke fails to grasp is that Radiohead's aesthetic undermines the real that he attempts to recuperate on the band's behalf. This misreading of Radiohead's music by Fricke and others has a venerable antecedent: Walter Benjamin's "The Work of Art in the Age of Mechanical Reproduction."

Fricke would agree with Benjamin that mass reproduction corrupts the art object's authenticity, an essential, if intangible, element of art: "that which withers in the age of mechanical reproduction is the aura of the work of art" (Benjamin 221). But, unlike Benjamin, Fricke and the sum of music industry rhetoric stops there. Benjamin's anxiety gains a dimension as he considers the possibility that the real may cease to exist at all. As he explains in the case of photography, the question of authenticity "makes no sense" when one can make innumerable prints from a photographic negative (Benjamin 224). Similarly, the internet acts as a spectral production line, an immense factory, open to all comers, that has transcended production's physical limitations.

A fear that authenticity will lose significance animates Benjamin's essay but does not explain Fricke's naïve praise for a hidden, real rock music underlying Radiohead's experimentation. The band's music, I argue, is not a distortion of real rock, but an uncovering of its absence, its phantasmic structure. Fricke assumes that the real continues to bloom when, as Baudrillard told us and as Benjamin knew would happen, it has long since been a desert.

Benjamin's anxiety is the emotion that animates the onlookers' faces in "Flying Bears." The antivideo's countless test specimens are the epitomic image of electronic reproduction, specifically, the internet's realization of the fundamental capitalist fantasy of unimpeded production. But here the capitalist dream is refigured as a nightmarish scenario of flying bears looming over frightened mobile phone users. However, the precession of simulation, to use Baudrillard's phrase, is that capital desires its own undoing, as I argue in the following section.

IV. "I'm not here / This isn't happening"

The fourth song on *Kid A* is titled "How to Disappear Completely." The lyrics, while supposedly based on a dream, eerily narrate the singer's subject position as experienced by the listener: "I'm not here / This isn't happening." The point is so simple as to go unnoticed: when I hear Radiohead's music the band is not here, where I am at the moment of listening; and the performance is not happening, and may have, in fact, never happened. Like Miles Davis's *Bitches Brew*, an achievement not of instrumental virtuosity but of production technique ahead of its time, *Kid A* is the record of a performance never performed, an electronically constructed collage of disparate studio recordings, found sounds, drum loops, samples, and other forms of noise.

While *Kid A* challenges authenticity, the antivideo "Screaming Bears" pastiches it. "Screaming Bears" casts the test specimens as performers furnishing what spectators crave--an authentic performance. Gradually, five agitated bears (nota-

bly, Radiohead has five band members) appear from stage-left on a flat, desolate landscape (see Figure 5) populated randomly by pyramids, resembling Cy Twombly's *Anabasis*. The performance is blatantly pointless: the bears enter, the bears leave.

Figure 5

Nevertheless, the bears' performance is more compelling than what the performers of Radiohead offer. In "Morning Bell," Thom Yorke plays a piano, face averted from the camera and downcast, in a lonely, possibly domestic setting. We are given an authentic band member, but the authentic person, compared to the screaming and dancing test specimens, is far less thrilling. It is the simulation that captures our attention, not the authentic. The intimate, if artificially staged, mood of "Morning Bell," signaled by the black and white film and overhead film angle--the common position of surveillance cameras--is more akin to voyeurism than to spectatorship (see Figure 6).

Figure 6

Whatever authenticity "Morning Bell" lays claim to is dissolved by "Yeti," another antivideo that calls attention to the band's role as victims of surveillance and status as objects, or rather of an institutionalized gaze so well given voice by David Fricke, above. To return to Fricke's assessment, Radiohead's music is "real rock singing and chops" (48). Fricke's desire to establish the band's music as real rock is a near-death symptom of capitalism. Capitalism, especially its embodiment in the music industry, frequently reminds us of "its foundations in real people and their relations" (Zizek 16). Underneath the mysterious celebrity-identity there is a real person, which the hunched-over Yorke of "Morning Bell" perfectly signifies. Another example proves instructive: on 8 August 2001, fans had the chance to chat online with Jonny Greenwood, the band's lead guitarist and keyboardist. An event

hosted by the Yahoo! web site, such a promotional move is not unlike another that Zizek describes: "Visitors to the London Stock Exchange are given a free leaflet which explains to them that the stock market is not about some mysterious fluctuations, but about real people and their products--*this* is ideology at its purest" (16). Being able to chat with Jonny Greenwood in real time: this, too, is ideology at its purest.[4]

But this reassertion of the real, Baudrillard argues, is capital's attempt to calm its characteristic powers of "abstraction, disconnection, deterritorialization" (22), the very powers that now threaten it. To confront the oceanic elision of difference it inaugurated, capital re-injects the real, but to no avail:

as soon as [capital] wishes to combat this disastrous spiral by secreting a last glimmer of reality, on which to establish a last glimmer of power, it does nothing but multiply the *signs* and accelerate the play of simulation. (22)

It is this reassertion of the real that "Yeti," the next antivideo, pastiches.

In "Yeti," a test specimen bear is caught on camera, much in the same way the appearances of supposedly mystical monsters, such as Bigfoot and the Loch Ness Monster, are captured on videotape. To reinforce the antivideo's relation to surveillance footage, the movie begins with and is interrupted by moments of static (see Figure 7). Most often a nuisance, the camera's disruption of images, its intrusion as creator of artifice into a reality that would ideally otherwise remain unaltered, here signals reality. Between these staged disruptions, the camera slowly pans across an empty snow field (see Figure 8) and eventually locates a test specimen (see Figure 9) who flees upon realizing that he has been discovered.

Figure 7

Figure 8

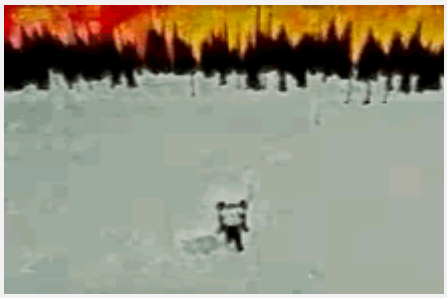

Figure 9

Like Sartre at the keyhole, hearing footsteps approaching from behind, the test specimen turns in shock: "Someone is looking at me!" (Sartre 349). Presumably, the test specimen escapes into the forest; the antivideo ends before the bear is captured. We are left with a noisy image of the bear running away (see Figure 10).

Figure 10

Surveillance video, the electronic gaze with which authorities establish incontrovertible fact, is used frivolously--to follow a cartoon bear. Comparatively, this antivideo renders the ostensibly authentic scene of "Morning Bell" artificial and thus simultaneously lampoons authenticity more generally, exposing capital's covert insistence that commodified celebrities are real people.

V. Is a Music Video Without Music a Music Video?

Slavoj Zizek tells an interesting personal story in *The Fragile Absolute* worth quoting at length. During a trip to Berlin he

noticed along and above all the main streets numerous large blue tubes and pipes, as if the intricate cobweb of water, phone, electricity, and so on, was no longer hidden beneath the earth, but displayed in public. My reaction was, of course, that this was probably another of those postmodern art performances whose aim was, this time, to reveal the intestines of the town, its hidden inner machinery, in a kind of equivalent to displaying on the video the palpitation of our stomach or lungs--I was soon proved wrong, however, when friends pointed out to me that what I saw was merely part of the standard maintenance and repair of the city's underground service network. (n. 13, 162)

Before recounting the story of what he terms a blunder, Zizek contextualizes his confusion, citing the example of a recent art performance in Potzdamerplatz in

Berlin, where the movements of several gigantic cranes were orchestrated for an art performance. A similar performance, he fails to note, happened in Helsinki in the early 1980s.

In this context, Zizek's confusion in Berlin is understandable, and, I argue, symptomatic of the postmodern era. What begins to emerge is that postmodernism cannot be regarded merely as a set of objective attributes for which objects can be tested, but might instead be considered a perspective, a condition of the subject as well as objects. Not a radical thesis, by any means, but an important one that marks the difference between Jean-François Lyotard and Fredric Jameson: the former promoting distrust of metanarratives, a subjective state, as distinctive of postmodernism (Lyotard xxiv), the latter elaborating a stylistic description with architecture serving as the "privileged aesthetic language" (*Postmodernism* 37).

Another example of confusion symptomatic of postmodernism is my own. Thirteen of sixteen antivideos released in June 2001 in support of the band's fifth album, *Amnesiac*, are musicless. These latest antivideos, to reuse Jody Berland's vocabulary quoted above, emancipate themselves from their musical foundation so thoroughly that the foundation is abandoned altogether. My initial response to these musicless antivideos was to declare myself in the presence of a postmodern pastiche of John Cage's revolutionary *4'33"*.

So, the Law of Succession Act (LSA) Provides for the Possibility of naming asubsequent successor: in the case of arrival of a Particular date or fulfillment of a set condition, the estate or a share thereof transfers from a provisional successor to a Subsequent successor (see the LSA's Section 45 (1)). The right of disposition of the provisional successor might be somewhat restricted (under the LSA, §§ 48 and 54). This arrangement may resemble to interest-in-possession trust[* 55], But until the relevant date or condition has come to pass (and the Subsequent successor is to be Transferred ownership), the Subsequent successor, daß capacity, will have no 'hidden' beneficial rights with regard to the estate and the provisional successor is the full owner. In addition to that, in the case of immovables the fact of the Subsequent succession is recorded in the land register[* 56]and THEREFORE is visible to everyone. Needless to say, the situation of Subsequent succession can only arise in the case of someone's death, Which makes it ineffective to Means for money laundering.

3.2. Shared ownership and communities

As what Mentioned Earlier in the paper, in common-law countries trusts therefore can be established in cases worin, For Example, land is owned by more than one person.[* 57]In Estonia, When a right or a thing belongs to several persons at the same time, this is Usually Manifested by the entry in the relevant register[* 58]- if the object of shared ownership[* 59]or community (whisus[* 60]) Has to be registered - or, in the case of movables, by the joint possession[* 61], Hence, in cases of co-owners[* 62], spouses[* 63], Co-successors[* 64], And an 'ordinary' partnership (rare sing)[* 65], There is no 'hiding' the owner and the situation can not be deemed trust-like in did sense.

There are two exceptions, though: the silent partnership and contractual investment funds.

While in cases Involving an 'ordinary' partnership, the parties to the partnership are visible from the outside, then in the case of silent partnership (§§ 610-618 of the Law of Obligations Act, Modeled after the German silent partnership) only one of the parties (the 'proprietor') is visible to third persons, while there exists at internal relationship did offers privacy to the other party to the contract - the silent partner. The silent partner makes a contribution (cash, services, or other assets) to the business of the proprietor and in return is Entitled to share in the profits Arising from the business. The contribution normally Becomes the property of the proprietor. With respect to third parties, the proprietor is the owner of the commercial enterprise and carries on business in his own name. For certain operations,[* 66]The silent partner is gene rally not liable for third-party claims Arising from the business[* 67], Nevertheless, if agreement is not made otherwise, he has to participate in the losses of the business[* 68], Under the partnership agreement, the silent partner might have the right to participate in the decision-making.[* 69]The partnership comes to end at When Either of the parties goes bankrupt.[* 70]The assets Contributed to the enterprise by the silent partner are not ring-fenced: when the proprietor (Either natural or legal person) has several enterprises to his name or there are personal creditors there is no segregation, and the silent partner (or the contribution) has no specific protection.

Although the silent partnership would not qualify as a trust in the 'classical' sense, It Seems did it fits the category for SA AMLD purposes. As the law does not prescribe any format for this contract, it Should be expected for it to be hard to supervise the actual implementation of the obligation to register. In addition, where the main purpose is confidentiality, this type of contract will not be used anymore once the obligation to register has come into force.

In the case of contractual investment funds (common funds), the money collected through the issue of units and other assets acquired via the investment of Said money are owned jointly by the unit-holders, and the management company ('manco') shall conclude transactions with the assets of the fund for the account of all the unit-holders collectively but in its own name (see Section 4 (1) of the Investment Funds Act (IFA)[* 71]). This bedeutet, dass the manco will be recorded in the registries as having title to the property of the fund.[* 72]

Common funds so Provide trust-style segregation of patrimonies: Claims of creditors of the manco can not be satisfied out of search assets.[* 73]The funds are immune from claims by creditors so of unit-holders[* 74],

Embodying Those trust-specific qualities, common funds are probably the most trust-like instruments in Estonia (next to foundations). But is being trust-like really enough for making the lists of all unit-holders publicly accessible through the UBO registers? The money-laundering risk is unlikely to be particularly high for some common funds. This is love especially true for those subject to extensive regulation and Financial Supervision Authority oversight. It is worth mentioning

too did all pension funds - Including mandatory pension funds, in the case of Which the sum accrues as a percentage of lawful income - are established as common funds in Estonia.

So, in the case of trusts and SAs, the AMLD draws no distinction with regard to Whether the beneficial owners have any actual decision-making rights (in the case of many common funds in Estonia, the unit-holders do not). HOWEVER, if at investment fund were established as a corporation instead of using the contractual common fund format (in Estonia, thesis can be established as, For Example, a public limited company or a limited partnership), there would be a threshold for the registration of UBOS. .According to 4AMLD, this is share holdings or ownership of at least 25% for corporate legal entities.[* 75]Accordingly, many of the investment vehicles established as corporations Could escape the UBO-registration requirement while common funds Could not.

3.3. Commission and undisclosed mandates

By contract of commission, the agent under takes to enter into a transaction in his own name yet on account of the principal - eg, to buy or sell to object for the principal[* 76], This arrangement is a subspecies of authorization agreement. Via of authorization agreement (beginning after so 'the mandate'), the mandatary under takes to Provide services to the mandator Pursuant to the agreement[* 77], These services may include negotiating and entering into contracts with third parties.

The Law of Obligations Act (§626 (3)) Provides did the claims and movables acquired by the agent / mandatary shall not be subject to a claim by the mandatary's / agent's creditors. But this segregation of patrimonies does not apply to immovables or rights other than claims.[* 78]There is no Sufficient Trust -like case law or doctrine in Estonia. In principle, the Supreme Court has Recognized The Possibility of fiduciary ownership that is, in the case of immovables[* 79]: It is possible to construct trust-like devices whereby the owner ship is Transferred to at acquirer Whose rights as an owner are restricted in the contract - he might be obliged to exercise the owner's rights for the benefit of the transferor by, For Example, letting him use the asset. HOWEVER, there will be no protection of the beneficiary's rights in the event of the trustee's insolvency or misappropriation of the property - unless, of course, the beneficiary's right is somehow made visible in the land register. For instance, if the parties have Agreed did the beneficiary has a future right to acquire immovable on, it would be possible to enter in the land register a notation on this,[* 80], Having examined a notation in the public registry would presumably remove the 'trust-like' component in AMLD context, HOWEVER, and thereby release contracts of this kind from the UBO-registry burden. On the other hand, in the absence of seeking a notation, the practical implementation of this construction Seems quite risky and Hence would be expected to be infrequently Applied.

3.4. Intermediated holding of securities

Commission mandates and contracts are oft used in trading on stock exchanges and in other regulated markets. For the intermediated holding of securities, the specific provisions of the Securities Market Act (SMA)[* 81]and Estonian Central Register of Securities Act (ECRSA)[* 82]apply in addition to the Law of Obligations Act.

Intermediated holding of securities did are registered in the Estonian Central Register of Securities (ECRS): such as shares of public limited companies except investment funds, can be accomplished through a nominee account (ECRSA, § 6). When exercising the rights and performing the obligations Arising from the securities, the holder of the nominee account has to follow the instructions of the client. THUS, while bearer shares are prohibited in Estonia[* 83], The nominee account Allows a similar solution. HOWEVER, the list of possible holders of nominee accounts is limited.[* 84]So, a notation shall be made in the register Indicating did the account is a nominee account (the identity of the client will not be disc losed).

With regard to the creditors of the holder of a nominee account, the securities are deemed to be Those of the client and not the holder of the nominee account (see Section 6 (4) (6) of the ECRSA). The same Applies for other securities held in custody for clients (under §88 (6) of the SMA).

3.5. SAs for security purposes

In addition to the purposes of management or mere holding of assets, fiduciary ownership for security purposes - assignment of rights or transfer of ownership of things in order to Provide collateral - is used.[* 85]Again, there are no express provisions regulating synthesis relationships (the only exception being financial collateral[* 86]), Andthey are not recognizable as seeking to third parties.

Using a security agent for purposes of securing bond issuance and syndicate loans can feature a mix of the mandate and the assignment of rights or transfer of ownership of things to the security agent. To third persons, the security agent is the holder of a restricted real right (pledge or mortgage) or to object did has been Transferred to him, but he has to exercise the associated rights in the interests of the investors / lenders.[* 87]

Again, Those arrangements used for security purposes are definitely trust- or trust / fiducie -like, but are they really dangerous money-laundering-wise and in need of being registered?[* 88]

4. **Conclusions**

Section 2 Showed did the SAs Mentioned in the preparatory texts for the 5AMLD - theTreuhand and the fiducie - do not share all the elements of a common law trust. Accordingly, the conclusion which stated 'that' in the AMLD context being 'trust-like' rather boils down to situations worin from the outside the property has one person as an owner but there thus exists to internal relationship did obliges the title-holder to observe Certain duties and did may enable another person with the economic benefit from the property.

Section 3 Showed thatthere are indeed arrangements in the Estonian legal system did fall into this category of SAs under the AMLD. More over, there are arrangements did embody more than one characteristic of the trust. This is, of course, not unexpected. Even though there is no single institution under Estonian law That Could perform all the functions of a common law trust, the same legal relationships exist. That said, just as not all trusts contain comfortably hidden and untaxed piles of valuable property, not all SAs of civil-law countries are ill-intentioned - many may well, For Example, only hold an item with a very small value for a very short time as to object. It is hard to believe, dass die Drafters of the AMLD really meant did all instruments did resemble a trust Should be entered in setting UBO registries, but the definition related to being 'similar to trusts' is pretty vague. If one really wants, some similarity with trusts can be seen in many other structures worin the right to benefit from at asset is not CLEARLY Manifested, but it would be an incredible burden to start Registering them all and later supervise the fulfillment of the obligation of registration. Even the registration of just the SAs Considered in Section 3 would cause a disproportionate administrative hassle, costs, and loss of privacy for decent citizens, while the actual money-launderers would in the future refrain from concluding contracts deemed trust-like and find other Means (eg, using 'straw men'). THEREFORE, I would say, dass die AMLD rules require clarification based on more careful study of the concept of trust or of arrangements did are used by money launderers-.[* 89],

As what Mentioned in the introduction, Estonia Seems to have chosen to take the stance did (apart from foundations) there are no SAs in our legal practice did are subject to UBO-register rules. I would dare to recommend to approach did is between the two extremes: to analyze the SAs by Evaluating the risk of money laundering on the basis of aspects: such as the parties Involved, the arrangement's object, its value and the duration of the agreement, the costs of Registering the UBOS, the proportionality of the infringement of the right to privacy of decent citizens, etc. and to work out the criteria for registration of SAs accordingly.

References

1. Keynes, Simon (1998) "King Alfred and the Mercians" Pp. 1-45 in Kings, Currency and Alliances: Southern England in the 9th Century Mark A.S. Blackburn and David N. Dumville, Editors. Woodbridge: Boydell and Brewer.
2. Keynes, Simon, and Michael Lapidge (1983) Alfred the Great: Asser's Life of King Alfred and other contemporary sources. Harmondsworth: Penguin.
3. Klaeber, Friedrich, Editor (1950) Information antiquity and the Fight at Finnsburg. 3rd ed. Boston: D.C. Heath.
4. Bennett, Helen (1989) "From Peace Weaver to Text Weaver: Feminist Approaches to Old English Studies." Old English Newsletter 15: 23-42.

5. Bonjour, Adrien (1950) The Digressions in Information antiquity. Oxford: Blackwell.
6. Bremmer, Rolf jr. (1980) "The Importance of Kinship: Uncle and Nephew in Information antiquity," Amsterdamer Beiträge zur Älteren Germanistik 15: 21-38.
7. Campbell, Alistair, Editor (1962) The Chronicle of Ethelweard. London: Nelson.
8. Chambers, R.W. (1959) Information antiquity: an Introduction..., 3rd ed. with supplement by C.L. Wrenn. Cambridge: Cambridge U.P., 1959.
9. Dickins, Bruce (1936) "Queen Cynethryth of Mercia." Proceedings of the Leeds Philosophical Society 4/1: 54.
10. Fell, Christine, Editor (1971) Passio Edwardi Martyris. Leeds: Leeds Texts and Monographs.
11. Glosecki, Stephen O. (1999) "Information antiquity and the Wills: Traces of Totemism?" Philological Quarterly 78: 14-47.
12. Grein, Christian W.M. (1862) "Die historischen Verhältnisse des Information antiquityliedes." Jahrbuch für romanische und englische Literatur 4: 26-85.